

**REMARKS/ARGUMENTS**

Before this Amendment, claims 1, 3-12 were present for examination. Claims 2 and 13-20 were canceled in a prior amendment. Therefore, Claims 1 and 3-12 are present for examination. Applicant respectfully requests reconsideration of this application.

**35 U.S.C. §102 Rejection, Anderson et al.**

The Final Office Action has rejected claims 1, 3-12 under 35 U.S.C. §102(b) as allegedly being anticipated by the cited portions of Anderson *et al.* (U.S. Patent No. 6,232,880) (hereinafter "Anderson").

The Applicant would like to thank the Examiner for the detailed explanation of his position in the office action. Applicant's attorney finds such detailed explanations to be very helpful in moving the case forward in a constructive manner.

Claim 1 has been amended to more clearly recite the claimed invention. Namely, claim 1 has been amended to clarify that the random time interval generator provides a randomized time between successive correction signals that are applied to an animal. For the examiner's convenience, claim 1 now recites the element:

"a random time interval generator coupled with said correction signal generator ~~and wherein~~ so as to generate said second sequence of correction signals with random time intervals between successive correction signals ~~is applied~~ in response to said random time interval generator".

In contrast, the Anderson reference that has been cited against claim 1 merely recites application of a correction signal to random sides of the animal. There is not recitation in Anderson that the correction signals are being applied to the animal at randomized time intervals.

Rather, it seems quite logical that Anderson merely anticipated randomly changing which side of the animal was applied to while still applying successive correction signals at regular intervals between successive correction signals.

The office action argued that the Anderson reference inherently taught a random time interval generator. Applicant's attorney respectfully traverses this argument. The principle of inherency under 35 USC §102 is a very limited principle that requires that a reference must necessarily teach an element without exception. This is a longstanding principle articulated in numerous cases before the Court of Appeals for the Federal Circuit and also noted by the MPEP. For example, the Manual of Patent Examining Procedure, Original Eighth Edition, Revised May 2004 states in section 2112 at pages 2100-54 through 2100-55:

"The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" In re Robertson, 169 F. 3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). . . .

In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)."

See Manual of Patent Examining Procedure, Original Eighth Edition, Revised May 2004 states in section 2112 at pages 2100-54 through 2100-55 (emphasis in the original).

As noted above, the Anderson reference does not necessarily dictate that time intervals will be varied between correction signals. Rather, time intervals between application of the correction signal in Anderson could still be at regular predetermined intervals -- only the side of the animal to which the correction signals is applied would be random. Thus, Anderson does not inherently teach the claim element "a random time interval generator coupled with said correction signal generator ~~and wherein~~ so as to generate said second sequence of correction signals with random time intervals between successive correction signals ~~is applied~~ in response to said random time interval generator".

It is believed that with the clarification of claim 1 that the difference between claim 1 and the Anderson reference can now be readily understood. Since the Anderson reference does not teach each and every element of claim 1, claim 1 is not anticipated by the Anderson reference. Therefore, claim 1 is in condition for allowance. Furthermore, since claims 3-12 depend from claim 1, those claims are also believed to be in condition for allowance.

### **IDS Issues**

The office action noted that the Information Disclosure Statement submitted on 8/31/06 failed to identify any reference. The information disclosure statement in that submission did in fact identify another application that was merely being brought to the attention of the examiner. -

Appl. No. 10/830,174  
Amdt. dated March 9, 2007  
Amendment under 37 CFR 1.116 Expedited Procedure  
Examining Group 3643

PATENT

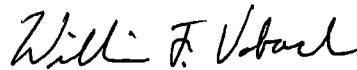
- i.e., application number 11/355,541. This application has again been identified in the Information Disclosure Statement filed on October 24, 2006. Therefore, there is no further need for Applicant to resubmit the information.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



William F. Vobach  
Reg. No. 39,411

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 303-571-4000  
Fax: 415-576-0300

WFV:klb  
60943683 v1